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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/696,846	10/31/2003	Farid Bruce Khalili	Ve 019	8064

7590 09/19/2006

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12 GOOD HILL RD.
BETHEL, CT 06801

EXAMINER

PELLEGRINO, BRIAN E

ART UNIT	PAPER NUMBER
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3738

DATE MAILED: 09/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/696,846	Applicant(s) KHALILI, FARID BRUCE	
	Examiner Brian E. Pellegrino	Art Unit 3738	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 June 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) 4, 5 and 13-16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 6-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

Applicant's election of Specie I in the reply filed on 6/26/06 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election *without traverse* (MPEP § 818.03(a)).

Claims 4,5,13-16 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected specie, there being no allowable generic or linking claim.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 6,7,9,10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 6, the assembly includes a "bottom side of a top component that has a raised portion". How can a **bottom** side be considered to include a "raised portion"? This is contradictory when a *bottom* side having any outward features would extend **downward** not up or "raised". Or did Applicant mean the first or outer side of the top component has a "raised portion" to receive bone ingrowth since this surface engages the vertebrae?

Claim 9 recites the limitation "said intermediate portion" in line 2 of the claim.
Claim 10 recites the limitation "said intermediate component" in lines 2 and 3 of the claim. There is insufficient antecedent basis for these limitations in the claims.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1,2,6,7,11,12 are rejected under 35 U.S.C. 102(b) as being anticipated by Bryan (WO 00/13619). Bryan shows (Fig. 4) a spinal implant **20** with a top component **22**, a bottom component **24**, and a plurality of middle components **41,42** each having a convex side. Fig. 9 shows the top component has concave portions **51,52** on its bottom side to engage the middle components. Fig. 2 illustrates the middle components are removably or slidably received onto posts **29** of the inner side of the bottom component **24**. It can also be construed (as best understood) that the *bottom* side of the top component **22** has raised portions or posts that are inclined.

Claims 1-3,6-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Mazda (WO 94/04100). Mazda shows (Fig. 5) a spinal implant with a top component **25**, a bottom component **26**, and a middle component **22** having a convex side **9**. The top component has a component having a concave portion **12** to engage the convex

surface of the middle component. It can be seen the middle component is removably or slidably received in groove **28** that surrounds it and is in the inner side of the bottom component **26** and the convex portion extends above the flat portion of the inner side of the bottom component. It can also be construed (as best understood) that the side of the top component **engaging** vertebrae has raised portions or spikes **17** that are inclined.

Claims 1-3,6-9,11 are rejected under 35 U.S.C. 102(b) as being anticipated by Boyd et al. (5425773). Boyd et al. show (Fig. 6) a spinal implant with a top component, a bottom component, and a middle component **146** having a convex side. The top component has a component having a concave portion **126** to engage the convex surface of the middle component. It can be seen the middle component is removably or slidably received in a groove that surrounds it and is in the inner side of the bottom component and the convex portion extends above a flat portion. It can also be construed (as best understood) that the side of the top component **engaging** vertebrae has raised portions or spikes **92** that are inclined. Fig. 7 shows a spinal implant with the middle component having a convex portion having a center of radius that is closer to an anterior edge than a posterior edge. Figs. 10,11,17 show a spinal implant with a plurality of middle components having a convex side to engage concave portions of a top component.

Claims 1-3,8,10 are rejected under 35 U.S.C. 102(a) as being anticipated by Keller et al. (EP 1344508). Fig. 3 shows a spinal implant with a top component **2** having a concave portion, a bottom component **9** adapted to slidably receive middle component

10. It can be seen that the middle component has a convex upper surface that engages the concave surface of the top component. It can also be seen that the middle component varies in height along the edges between the anterior edge and posterior edge. The bottom component has a flat rail 7 that forms a groove that receives the middle component with its convex portion extending above the flat surface.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian E. Pellegrino whose telephone number is 571-272-4756. The examiner can normally be reached on M-Th (6:30am-4pm) and alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on 571-272-4754. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

TC3700, AU 3738

BRIAN E. PELLEGRINO
PRIMARY EXAMINER

